IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.6394 OF 2001

1. Shri Kantilal Lavajibhai Kapadia
Age Adult, Occ.Business, residing
at Umarkui, Silvassa, Dadra and
Nagar Haveli. .. Petitioner.

v/s.

1. The Administrator,
Dadra and Nagar Haveli at
Secretariate, Silvasa.

2. The Collector,
Dadra and Nagar Haveli at
Silvassa.

3. Shri Kamal Malhotra,
Land Acquisition Officer, Dadra
Nagar Haveli, having his office
at Silvassa, Dadra and Nagar Haveli.

4. Union of India. .. Respondents

Mr.B.D.Joshi for the petitioner.

Mr.G.S.Kulkarni for the respondent Nos.1 to 3.

CORAM : R.M.S.KHANDEPARKAR AND
V.M.KANADE, JJ.

DATED : 18th August, 2005

ORAL JUDGMENT (Per R.M.S.Khandeparkar, J.)

Heard.

2. By the present petition, the petitioner is seeking declaration in the nature to the effect that the action of respondents in acquiring the land alleged to be in possession of the petitioner and on the demolition of the structures standing on such land on 12th June, 2001 to be illegal and further

for writ of mandamus in the nature of direction to the respondent to reconstruct the demolished structure at their cost on the said land and further to issue a regrant order in relation to the area admeasuring 1440 sq.ft. from the land bearing survey No.877 Part-III, situated at Silvassa, District Dadra and Nagar Haveli.

3. The few facts relevant for the decision are that the suit land bearing survey No.877/3 alongwith some other pieces of land was granted to one Narayanbhai Rewalabhai Rohit of Silvassa in terms of the provisions of Dadra and Nagar Haveli Land Reforms Regulation, 1971 under order dated 13th June, 1977. Consequent to breach of condition of the grant committed by said Shri Rohit, the same was ordered to be cancelled and the land forfeited under order dated 6th March, 1987 by the Collector of Dadra and Nagar Haveli. The said order was carried in appeal before the Administrator of Dadra and Nagar Haveli being appeal No.94 of 1989 which came to be dismissed on 24th November, 1989. Thereupon Shri Rohit filed a civil suit No.12 of 1990 in the Court of Civil Judge, Dadra and Nagar Haveli seeking declaration to the effect that the order dated 6th March, 1989 passed by the Collector and order dated 24th November, 1989 passed by the Appellate Authority were without jurisdiction and bad-in-law and in the alternative prayed for direction for

regrant of the area admeasuring 1440 sq.ft. out of survey No.877/3 i.e. the suit land. In the suit, the relief in the nature of declaration that the petitioner herein had no right to the suit land and further for injunction was also prayed for. During the pendency of the suit, an application for temporary injunction was also filed which came to be dismissed by order dated 18th January, 1991 and further the suit itself also was dismissed by the judgment dated 27th September, 1991.

4. It is the contention of the petitioner that meanwhile, he filed an application with the competent authority for fixation of the occupancy price in relation to the suit land viz. area 1440 sq.ft. out of survey No.877/3 but the respondents failed to fix the occupancy price and merely demanded that the petitioner should furnish a map showing the actual area in his possession. In that regard, the petitioner approached the survey authorities to demarcate such area and to issue him the necessary survey plan. However, to his surprise the said authority refused to issue any such plan claiming that the land belongs to the Government. It is further case of the petitioner that inspite of the petitioner having submitted his willingness to pay the occupancy price in respect of the suit land and, without acquiring the suit land as well as without affording any opportunity to the petitioner

of being heard in the matter, the respondents illegally demolished the structure of the petitioner which existed in the suit land and illegally evicted the petitioner therefrom without due process of law under the guise of widening of the road. This, according to the respondents, was done in the month of June, 2001 and request of the petitioner to give him further time to approach the court for necessary relief was not attended to and in high handed manner, the petitioner was sought to be evicted from the land which was in lawful possession of the petitioner pursuant to the grant thereof in favour of the petitioner consequent to the forfeiture of the grant in favour of Mr.Rohit in the year 1989.

Hence the present petition.

5. The respondents, on the other hand, while denying the claim of the petitioner have stated in their affidavit-in-reply that at no point of time, the occupancy rights of the suit land were granted in favour of the petitioner and further, the illegal occupation sought to be made by the petitioner in the suit land was removed after hearing the petitioner and after affording sufficient opportunity to the petitioner to remove his belongings from the suit land.

6. The learned advocate appearing for the petitioner drawing our attention to the order dated

6th March, 1989 passed by the Collector, submitted that by the said order, the Collector who is otherwise duly empowered to pass an appropriate order regarding grant of occupancy rights had, while forfeiting the occupancy rights in favour of Rohit, granted those rights in favour of the petitioner subject to that the petitioner should pay the occupancy price on the same being ascertained and fixed by the competent authority. It is, therefore, the contention on behalf of the petitioner that the petitioner had been in lawful occupation of the suit land since 6th March, 1989 and the petitioner cannot be blamed for non-payment of the occupancy price as the same was never fixed by the competent authority. It is his further submission that the respondent never issued any show-cause notice nor called upon the petitioner for hearing in the matter before taking any action for removal of his structure from the suit land and on the contrary, inspite of the specific request by the petitioner for grant of some time to approach this court, taking law in their hand illegally evicted the petitioner from the lawful possession of the suit land. He further submitted that it was never disputed by the respondents in the course of the correspondence that the occupancy rights of the suit land had, in fact, been granted to the petitioner and this is also apparent from the fact that in the course of acquisition proceedings, the suit land granted in

favour of the petitioner was specifically excluded. The attention is drawn in that regard to the schedule which was annexed to the notification issued under section 4 in relation to the acquisition of land for the purpose of widening of the road and it was submitted that the suit land was specifically omitted therefrom. The learned advocate appearing for the respondents, on the other hand, submitted that there was no grant of whatsoever nature issued in favour of the petitioner in relation to the suit land and even before removal of the illegal structure which was sought to be erected by the petitioner in the suit land, the petitioner was heard and sufficient time was granted to him for removal of his belongings from the suit land and only upon failure on the part of the petitioner to remove the same in the specified period, the respondents were left with no alternative than to demolish the illegal structure.

7. Undisputedly, the claim of the occupancy rights in relation to the suit land is based solely on the basis of the order dated 6th March, 1989 passed by the Collector in L.R.Case No.211/74. Undisputedly, the said order was passed by the Collector in exercise of his powers under section 4(6) of the Dadra and Nagar Haveli Land Reforms Regulation, 1971. Clause (6) of section 4 of the said Regulation provides that no person shall transfer by

way of sale, lease, mortgage, exchange or otherwise, any agricultural land, including any part thereof, in respect of which occupancy rights are deemed to have been granted to him under the said section except in accordance with such rules as may be made in that behalf. It is also undisputed fact that the occupancy rights which were granted in favour of Rohit in respect of the suit land and some other pieces of land were cancelled and the land was forfeited under order dated 6th March, 1989 on account of illegal lease granted by said Rohit in relation to the suit land in favour of the petitioner. The clear observation in that regard is to be found in the said order which reads that, "It has been reported that Shri Naranbhai Revalabhai Rohit, the agriculture holder leased out 40' x 36' piece of agricultural land out of survey NO.877/3. Total area of 0.39 Pk. to one Shri Kantilal Lavjibhai Kapadia". It was on account of illegal transfer in the form of lease in favour of the petitioner that the occupancy rights in favour of Shri Rohit came to be forfeited under the said order. The operative portion of the said order reads thus-

> "The occupancy rights granted vide Land Reforms Officer's order dated 13.6.1977 in respect of an area of 40' x 36' i.e. 1440 sq.ft. out of S.No.877 Pk. total admeasuring 0-39 hectares shall stand forfeited to the Government. However, the land should be granted to purchaser on payment of occupancy price. No order as to cost. If purchaser fails to make payment

land shall vest in Government."

Referring to the said operative portion, it was strenuously argued on behalf of the petitioner that the word "purchaser" referred to in the said operative portion refers to the petitioner. In that connection, attention was also sought to be drawn to the cause title of the said order wherein infront of the name of the petitioner, the word "purchaser" has been used. At the outset, it is to be noted that merely because in the cause title, the name of the petitioner is followed by the word "purchaser" that itself would not make the petitioner to be purchaser as such. Neither the operative portion of the order nor any other part of the order passed by the Collector, the petitioner has been either described as the purchaser nor there is any finding to that effect that there has been any grant of occupancy rights in favour of the petitioner in relation to the suit land or any part thereof. On the contrary, the petitioner has been identified therein specifically as the "lessee" of Rohit. There is a specific finding in that regard which reads thus-

> "The argument between both Shri Rohit and Kapadia executed on 25.3.1979 initially to be valid for 11 months on payment of lease amount of Rs.161/- per month. Shri Kantilal L. Kapadia hereafter called as lessee, thereafter constructed residential house thereon covering 75 sq.mtrs. which includes 55 sq.mts. of road margin land of Government."

8. Considering the word "argument" which is found in the said finding in the copy of the order placed on record by the petitioner, the learned advocate for the petitioner was requested to forward the original certified copy of the order for our perusal. However, no such copy was produced by the learned advocate for the petitioner. Production of such copy was also necessary to ascertain whether in the said finding, the word "argument" was wrongly typed instead of the word "agreement"; likewise, whether the word "purchaser" after the name of the petitioner was also wrongly typed or not, needed to be ascertained. It appears that, however, the petitioner did not find it convenient to produce the certified copy of the order. Be that as it may, the fact remains that the order nowhere describes the petitioner to be purchaser of the land nor it gives any finding to the effect that any occupancy rights in relation to the suit land were ever granted in favour of the petitioner.The petitioner, by no stretch of imagination, can take advantage of the observations made in the operative portion of the order to the effect that, "the land should be granted to the purchaser on payment of occupancy price" to mean that by the said observation itself, the land was granted in favour of the petitioner and only the occupancy price was required to be ascertained and to be paid by the petitioner. Undisputedly, there

is elaborate procedure prescribed for the grant of occupancy rights in relation to an immovable property in favour of any person under the Dadra and Naghar Haveli Land Reforms Regulation, 1971 and rules made thereunder. Undisputedly, the petitioner has not been able to place on record any such order having been passed by the competent authority after following such procedure in relation to the suit land in favour of the petitiioner. Being so, by misconstruing the observation made by the Collector in the order dated 6th March, 1989, the petitioner cannot assume to have acquired the occupancy right in the suit land.

9. It was also sought to be argued on behalf of the petitioner that the fact that the petitioner was granted occupancy rights under the said order of 6th March, 1989 was duly confirmed by the Civil Court in Civil Suit No.12 of 1990. In that connection, attention was drawn to the order dated 18th January, 1991, passed by the trial court while disposing the application for temporary injunction as well as the specific observation therein which reads thus-

> "Copy of this order is placed on record which speaks that the occupancy rights granted to the plaintiff regarding suit land admeasuring 1440 sq.ft. shall stand forfeited to the Government and further it was to be granted to the purchaser on payment of occupancy price. In these proceedings the purchaser was the

defendant No.3 as it can be seen from the

order itself. It means vide this occupancy rights were granted in favour of the defendant No.3 by the defendant No.1 after forfeiture of the suit land given to the plaintiff."

Undisputedly the said observations were made in the order disposing the application for temporary injunction in a suit which was ultimately dismissed on the ground of lack of jurisdiction to entertain the suit. Apart from the fact that any order passed during the pendency of the suit would stand merged in the final judgment passed in the suit, once the Civil Court had come to the finding that it had no jurisdiction to entertain the suit and therefore, the suit was dismissed, all the observations made in relation to the merits of the case also stood without jurisdiction and therefore, no value can be attached of whatsoever nature to the said finding stated to have been given by the trial court in the order passed while disposing the application for interim relief. Being so, any observation which has been made without jurisdiction will carry no value whatsoever and no right can be claimed based on such findings stated to have been given by the trial court while disposing the application for interim injunction.

10. As regards the contention that at no point of time during the correspondence between the petitioner and the Government authorities on the

point of fixation of occupancy price, there was any objection by the respondent as regards the contention of the respondents in respect of the rights to the suit land in favour of the petitioner, it is to be noted that the petitioner has not been able to point out any order having been passed granting the occupancy right in relation to the suit land. As regards the rights in the Government land, the same cannot be claimed or acquired on the basis of the failure on the part of the authorities to deny the alleged rights claimed by any party nor any party can claim rights to the Government land merely because the claim made by such party in the course of correspondence with the Government officers, such officers fail to deny such claim. The right to the Government land has to be acquired by the procedure known to law and when the procedure is specifically enumerated under the statutory provisions, the person can claim right to the Government land only after satisfying those provisions of law relating to the acquisition of the right to the Government land and not otherwise. Being so, even assuming there is failure on the part of the Government authorities to deny the claim made by the petitioner regarding grant of land, that itself can not ipso facto create right in favour of the petitioner to the suit land, once it is undisputed that the suit land belongs to the Government.

11. It is then sought to be contended on behalf of the petitioner that the suit land does not figure in the schedule appended to the notification issued under section 4 for the purpose of acquisition of land for road widening. One fails to understand the logic behind the argument. If the land which belongs to the Government in respect of which the occupancy rights were granted in favour of Rohit and which rights were forfeited under order dated 6th March, 1989, on such forfeiture, the land vested in the Government free from any encumbrance where was the occasion to the Government for acquisition of its own land. The very fact that the Government did not include such land in the land acquisition proceedings further confirms the stand of the Government that the occupancy rights were never granted in favour of the petitioner in relation to the suit land. The fact that there was conscious omission to include survey No.877/3 in the notification issued under section 4 relating to the land acquisition discloses that the Government always held the suit land as a piece of land of the Government itself without any encumbrance. For the reasons stated above, therefore, there is absolutely no case as regards the grant of occupancy rights in relation to the suit land in favour of the petitioner.

12. As regards the contention about the illegal demolition of the structure and eviction of the petitioner from the suit land, once it is established that the petitioner has no right to occupy the said land, merely because the petitioner had illegally sought to erect the structure in the suit land, it cannot be said that the eviction of the petitioner from the suit land is illegal. Undisputedly, the petitioner was fully aware of the fact that the road was being widened and in that regard the structure which was raised by the petitioner in the suit land could be demolished. The petitioner himself had filed application on 18th May, 2001 requesting the respondents not to demolish the structure. In that regard, the copy of such application filed by the petitioner which was placed on record by the respondents, the relevant portion of which read thus-

> "Sir, I am ready to demolish the above said portion of the structure for the road widening purpose subject to the condition that first the occupancy price of the above said land should be fixed and the occupancy rights of the said land should be granted in my favour and the possession of the land admeasuring 40’ x 36’ should be handed over to me, before demolishing the structure.
>
> Hence I humbly request your honour to direct the concerned authorities to first fix the occupancy price of the above said land and grant occupancy rights in my favour and hand over the possession of the above said land, then direct me to demolish the above said portion, which is required for the purpose of road widening. In that

> case I am ready to demolish the said construction."

The letter was written, as already stated above, on 18th May, 2001. The letter discloses clear admission on the part of the petitioner that there was no occupancy rights granted in favour of the petitioner in favour of the suit land till that date. It further discloses that the possession of the suit land was never handed over to the petitioner. Thus apparently the structure which was sought to be erected in the suit land was illegal and without any authority. It also discloses a clear admission on the part of the petitioner that the demolition of such structure was necessary for the purpose of road widening. Considering all these aspects, can it be said that the respondents have acted in a high-handed manner or having taken law in their hand.

13. Certainly, the answer to above question has to be in the negative. If at all, there was any high-handedness, it was on the part of the petitioner in erecting the illegal structure in the suit land. It is also a matter of record that pursuant to such application, the petitioner was heard in the matter and only thereafter, the said structure was demolished. Therefore, there was absolutely no substance in the grievance sought to be made by the petitioner that there was failure on the part of the respondents to give prior notice

for demolition of the structure.

14. For the reasons stated above, therefore, there is absolutely no case made out for grant of any relief. The petition fails and is dismissed. Rule is discharged. No costs.

(R.M.S.KHANDEPARKAR, J.)

(V.M.KANADE, J.)